

TAB A

William Smith

Deposition

December 8, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EEOC,
Plaintiff,

and

SHOTSAY POSCIRI,
Plaintiff-Intervenor,

vs.

UNITED FREIGHT &
TRANSPORT, INC.,
Defendant.

Case No. A05-122 CV

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12-14**DORSEY & WHITNEY LLP.**
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DEPOSITION OF WILLIAM SMITH,

Pages 1-132, inclusive

Commencing at 9:31 a.m.

Thursday, December 8, 2005

Anchorage, Alaska



Alaska Stenotype Reporters
511 West Ninth Avenue
Anchorage, AK 99501-3520
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Exhibit A
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1 A. Semi-truck driver, yes.
 2 Q. In and around Anchorage?
 3 A. Greater Bowl Area, yes, Wasilla. During the
 4 fishing season we took some trips to Seward and Whittier.
 5 Q. And how long did you work for them?
 6 A. Until October of '03.
 7 Q. And you indicated before that it was due to
 8 health problems that you stopped working with them?
 9 A. Yes.
 10 Q. Were there any layoffs in there?
 11 A. The first year I worked for them I was laid
 12 off, I believe, three times.
 13 Q. Do you know why?
 14 A. Lack of work.
 15 Q. Was that pretty common?
 16 A. Yes.
 17 Q. Did you have any other layoffs during the years
 18 you were working for United Freight?
 19 A. No.
 20 Q. And who determined -- was it your choice to
 21 leave United Freight in October of 2003?
 22 A. No, it wasn't.
 23 Q. How was that decided?
 24 A. It was decided by DOT's new regulation that if
 25 you have a pacemaker defibrillator in your chest, they

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1 recommend you not be recertified. So I couldn't get an
 2 ICC physical card anymore, so I was no longer qualified
 3 to drive.
 4 Q. Did you do any other jobs for United Freight,
 5 or did you just leave at that time?
 6 A. I had been assistant dispatcher for them at
 7 times, but we already had one, so there wasn't a position
 8 available there.
 9 Q. And it was October of 2003 that you left?
 10 A. I'm pretty sure it was.
 11 Q. Do you remember the specific date by chance?
 12 A. No. It wasn't one that I was too thrilled
 13 about.
 14 Q. Right. Do you remember if it was early or late
 15 October?
 16 A. I honestly cannot tell you.
 17 Q. Prior to working for United Freight, did you
 18 have jobs that required you to establish knowledge of the
 19 Anchorage Port -- your jobs at Mayflower when you were
 20 self-employed?
 21 A. When I worked for Anchorage Cold Storage, yes,
 22 because I used to do the same thing for them for a period
 23 of time that I did for United Freight. I would pull
 24 trailers off the Port.
 25 Q. So when did you start working in the Port?

Page 20

1 A. I'm going to say probably about 1978.
 2 Q. At that time, was the -- was it difficult to
 3 learn the way the Port worked -- the way the Port was set
 4 up as a driver?
 5 A. I wouldn't say difficult.
 6 Q. Has the Port changed since 1978?
 7 A. Yes.
 8 Q. When did it change?
 9 A. Just growth mainly.
 10 Q. Is it substantially different than it was in
 11 1978?
 12 A. Yes.
 13 Q. Are you familiar with the way the Port is set
 14 up today?
 15 A. Yes, I am.
 16 Q. Has the port changed substantially in the last
 17 few years?
 18 A. Yes.
 19 Q. When did it change substantially in the last
 20 few years?
 21 A. About six months before I quit, sometime in the
 22 early part of 2003.
 23 Q. What happened then?
 24 A. Tote did a major restructure of their yard.
 25 Q. And can you tell me who Tote is?

Page 21

1 A. Totem Ocean Trailer Express. It's one of the
 2 two shipping companies that brings trailers into Alaska.
 3 Q. And is the other company Horizon?
 4 A. Horizon Lines.
 5 Q. So there are two major companies in the Port;
 6 is that correct?
 7 A. Down in that area, yes.
 8 Q. Are there other areas where there are other
 9 companies?
 10 A. Yes.
 11 Q. And who are the other companies?
 12 A. The barge companies that bring barges into
 13 Alaska with freight on them.
 14 Q. So as a driver would you be taking trailers
 15 from Tote and from Horizon and from these other various
 16 barges?
 17 A. Occasionally from the barges. Occasionally
 18 meaning once every two or three months. The rest of them
 19 they were daily.
 20 Q. So daily you would be working with the two
 21 major companies?
 22 A. Yes.
 23 Q. And how are the two major companies set up in
 24 the Port? Do they have their own sections or buildings?
 25 A. Yes, they do. They're independent from each

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6 (Pages 18 to 21)

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<p>Page 50</p> <p>1 truck than what I was driving.</p> <p>2 Q. Do you routinely change trucks during the same</p> <p>3 day?</p> <p>4 A. No.</p> <p>5 Q. It would be the same truck all day?</p> <p>6 A. Unless it breaks down.</p> <p>7 Q. And do you take all of the candidates on the</p> <p>8 same route?</p> <p>9 A. No.</p> <p>10 Q. What determines what route you take?</p> <p>11 A. Where the dispatcher sends me with the trailer.</p> <p>12 Q. So the drive test is happening while you're</p> <p>13 actually doing your real work?</p> <p>14 A. That's right.</p> <p>15 Q. So the tester just gets -- the person who is</p> <p>16 being tested comes along and does part of your work with</p> <p>17 you?</p> <p>18 A. That's right.</p> <p>19 Q. So it's not a made up situation, it's real?</p> <p>20 A. It's real.</p> <p>21 Q. Are you familiar with anything called --</p> <p>22 something like a 15-minute out rule, or any sort of</p> <p>23 minimum amount of time for a test to see how a person is</p> <p>24 driving?</p> <p>25 A. No.</p>	<p>Page 52</p> <p>1 these two?</p> <p>2 A. Dan Tullis and Shotsay.</p> <p>3 Q. So they both went to the same place?</p> <p>4 A. Yes, they did.</p> <p>5 Q. And because of the distance it would have been</p> <p>6 pretty much impossible for them to conduct their entire</p> <p>7 test in much less than two hours? Is that what you're</p> <p>8 saying?</p> <p>9 A. Hour roundtrip.</p> <p>10 Q. Hour roundtrip. So it would be impossible to</p> <p>11 conduct a test in less than an hour?</p> <p>12 A. Not impossible, no. I mean, for that -- to go</p> <p>13 to that customer and back, it would take about an hour to</p> <p>14 roundtrip it.</p> <p>15 Q. Okay.</p> <p>16 A. But I could perform a driving test going around</p> <p>17 the block.</p> <p>18 Q. But in this specific one --</p> <p>19 A. Yes.</p> <p>20 Q. You were driving out to K&L?</p> <p>21 A. Yes.</p> <p>22 Q. And where did the -- actually, we'll get into</p> <p>23 the specifics of their tests in a bit.</p> <p>24 MS. HEALY: Can we take a break?</p> <p>25 MS. KUCUK: Sure.</p>
<p>Page 51</p> <p>1 Q. And you said sometimes people have -- for you</p> <p>2 the shorter the test, aside from the five-minute people</p> <p>3 who can't drive at all, the shorter the test means you</p> <p>4 feel pretty comfortable with their driving, and that's</p> <p>5 why it would be shorter?</p> <p>6 A. Yes.</p> <p>7 Q. But you're not sure why another tester might</p> <p>8 give a short or a long test?</p> <p>9 A. No. We don't discuss between us what we look</p> <p>10 for when we're doing a driving test. We don't. Never</p> <p>11 have.</p> <p>12 Q. Do you think it would be possible to conduct a</p> <p>13 driver's test in 34 minutes?</p> <p>14 A. It's possible.</p> <p>15 Q. You mentioned if you feel comfortable with the</p> <p>16 way a person is driving, you might do only one -- did you</p> <p>17 say -- did you call it delivery?</p> <p>18 A. Delivery.</p> <p>19 Q. How long would one delivery take do you</p> <p>20 suppose, or does that depend also?</p> <p>21 A. It depends on where the customer is. K&L,</p> <p>22 where these two went, is about an hour roundtrip from the</p> <p>23 Port out and back. Pepsi is about an hour and 40</p> <p>24 minutes.</p> <p>25 Q. So these two -- who do you mean when you say</p>	<p>Page 53</p> <p>1 (Break was had.)</p> <p>2 BY MS. KUCUK:</p> <p>3 Q. Before the break I was just starting to get</p> <p>4 into the -- some of the basics of the driver's test</p> <p>5 generally.</p> <p>6 When you get the person that you're going to</p> <p>7 test from dispatch, what information do you get about the</p> <p>8 candidate?</p> <p>9 A. Usually very little. We're introduced, and</p> <p>10 they're told that I'm going to be giving the driving</p> <p>11 test. Other than that no real background stuff -- not as</p> <p>12 a standard procedure.</p> <p>13 Q. So does it usually happen pretty quick? Do you</p> <p>14 know in advance that you're going to be giving a test</p> <p>15 tomorrow or next week?</p> <p>16 A. No, not generally.</p> <p>17 Q. Does it happen that day?</p> <p>18 A. Usually.</p> <p>19 Q. So the dispatcher gives you a call and says</p> <p>20 they have a test they would like you to give today?</p> <p>21 A. That's right.</p> <p>22 Q. And you find out who the person is right when</p> <p>23 you're introduced?</p> <p>24 A. That's right.</p> <p>25 Q. Does the dispatcher -- when the dispatcher --</p>

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14 (Pages 50 to 53)

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1 and by dispatcher are we talking about Dana?

2 A. Yes.

3 Q. When Dana tells you you're going to be giving a
4 test today, does he ever say and his name is this and
5 this? Does he tell you the name before you meet the
6 person?

7 A. No.

8 Q. And has it ever happened where Dana has been
9 particularly excited about a person and said that you're
10 going to be giving a driver's test today, and this driver
11 looks like a great driver?

12 A. No.

13 Q. Or the opposite?

14 A. No.

15 Q. So nobody has ever said this might be a
16 five-minute driver's test today?

17 A. No.

18 Q. So you meet the person, and that's basically
19 all the information you get --

20 A. Yes.

21 Q. -- is their name when you meet them?

22 A. Yes.

23 Q. And so you never have any real time to do any
24 looking into their past history?

25 A. That's not my part of the hiring process.

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1 Q. Do you see their application?

2 A. No.

3 Q. So you really have no information except their
4 name and how they drive?

5 A. I don't know how they drive until they go out
6 on the street.

7 Q. Right. Okay. And what specific qualities are
8 most important to you when you're watching a drive test,
9 administering a drive test?

10 A. That would just be their efficiency behind the
11 wheel, how they handle everything that's involved with
12 driving, how at ease they are behind the wheel, and their
13 ability, meaning, how well they can back a trailer up,
14 and how well they disconnect from it.

15 Q. When you say "efficiency," what do you mean?

16 A. Keep their eyes on the road while they're
17 shifting, keeping their eyes everywhere, actually,
18 because you need to be moving from the mirror to the
19 road, watching your instrument panel periodically.
20 Efficiency when you are hooking up to make sure you do
21 things in an orderly fashion so that you're not running
22 around the truck two or three times.

23 Q. And when you say, "at ease," just their comfort
24 level?

25 A. Yes.

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1 Q. And do you mean that in general, or also when
2 things get hairy down the road?

3 A. Yes.

4 Q. So if they keep a cool head?

5 A. Yes.

6 Q. That's what you mean?

7 A. Yes.

8 Q. Do you get a feel for that pretty quickly?

9 A. Yes.

10 Q. And sometimes, you mentioned before if a person
11 is a little bit ill at ease, you will occasionally
12 continue the test a bit longer to see if it's just
13 nerves?

14 A. That's right.

15 Q. Does that happen frequently?

16 A. No.

17 Q. Most people get in and feel pretty comfortable?

18 A. Yes.

19 Q. Do most people -- does it take a little bit of
20 time for them to get used to the particular truck?

21 A. Yes, it does.

22 Q. How long does that usually take?

23 A. A few minutes.

24 Q. And is that for anyone, even for experienced
25 drivers?

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1 A. Yes.

2 Q. So just to get yourself set up in the truck?

3 A. No two trucks are the same even if they are
4 made by the same company. They handle different. They
5 drive different. They have a different transmission in
6 them. Just always different.

7 Q. So you allow for a little bit of time to
8 adjust?

9 A. Sure.

10 Q. Is it important to you if they have familiarity
11 with the Port?

12 A. To me personally, no, but to the company it's
13 an asset.

14 Q. Does the company ask you to get a feel with how
15 familiar the driver is with the Port?

16 A. They don't specifically ask me, no. That's
17 just something that comes along with knowing how to do
18 the driving test.

19 Q. So if a person who's doing a driving test does
20 not have familiarity with the Port is it still possible
21 to complete a pretty successful driver's test?

22 A. Anybody can do a driving test, you know, if
23 they're qualified as a driver. To send somebody on a
24 driving test that has no knowledge of the Port area would
25 be a great detriment to doing the driving test. But I

15 (Pages 54 to 57)

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1 don't think United Freight would ever do something like
2 that personally.

3 **Q. You don't think they would send someone with no**
4 **familiarity with the Port -- to the Port in a driving**
5 **test?**

6 A. As the tester, no.

7 **Q. Oh, as the tester. I'm talking about the**
8 **person who is taking the test. The testee or the**
9 **candidate. So I assume that all the testers have**
10 **familiarity with the Port?**

11 A. Yes.

12 **Q. All the people who administer the test?**

13 A. Yes.

14 **Q. Now, what about the person -- the candidate?**
15 **The person who you might be hiring, the person who is**
16 **going to come and do a driving test; is it possible for**
17 **them with little or no knowledge of the Port to complete**
18 **a successful driver's exam?**

19 A. Sure.

20 **Q. Would it be a hindrance to them to not know?**

21 A. Yes, it would.

22 **Q. In what way?**

23 A. Because I would have to sit in the passenger
24 side seat and tell them where to go. And as company
25 representative I have to take that into consideration

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1 **back?**

2 A. As a general rule, yes. I'm not going to say
3 everybody would be because some people pick it up faster
4 than others.

5 **Q. Just like with everything?**

6 A. Yeah.

7 **Q. Do you know if United Freight hires people who**
8 **are qualified, but who do not have knowledge of the Port?**

9 A. We've done that, yes.

10 **Q. While you're giving a test, do you give**
11 **feedback during the test?**

12 A. Generally, no. I'm usually quiet as a mouse
13 over there and that's one of the things that makes them
14 nervous and I like to do that.

15 **Q. See how at ease they are?**

16 A. See how they handle it.

17 **Q. Do you give them any feedback when they're**
18 **finished?**

19 A. Yes, if they ask. I don't generally -- when
20 we're done with the driving test I don't generally stop
21 and tell them that you did good here you did bad there,
22 or anything like that.

23 **Q. But if they ask?**

24 A. If they ask, I tell them.

25 **Q. Both good and bad?**

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1 because if you hire somebody that has no knowledge of say
2 just the port area and they don't know how to do it, then
3 they're either on the radio to dispatch asking how to do
4 it, or they're out of the truck taking time to ask
5 questions on how to do it. And time is the key
6 ingredient with the job that United Freight does.

7 **Q. So that would affect their efficiency?**

8 A. Yes.

9 **Q. Now, you mentioned before with some of those**
10 **people who come to take the tests, some of these**
11 **candidates, if they don't have Port experience you tell**
12 **them they better get out and get some understanding of**
13 **the Port during this time when you're drug test is being**
14 **processed?**

15 A. That's right.

16 **Q. So you mentioned that drug tests can be three**
17 **days or longer?**

18 A. Yes, it can be -- minimum three.

19 **Q. Minimum three. So if a person -- a candidate**
20 **who is otherwise qualified and completed their driver's**
21 **tests and heard you say this wise advice, go out and get**
22 **some familiarity with the Port, if they would do that, if**
23 **they followed your advice and spent three days with**
24 **another driver in the Port, do you think that they would**
25 **be ready to go if on the fourth day the drug test comes**

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1 A. Both good and bad.

2 **Q. Do you ever give feedback during the actual**
3 **exam?**

4 A. I would say no.

5 **Q. So as a rule you keep quiet?**

6 A. Yes.

7 **Q. Aside from --**

8 A. General conversation.

9 **Q. General conversation?**

10 A. Unless they don't know where they're going then
11 I have to tell them how to get there.

12 **Q. Do you give written feedback?**

13 A. No.

14 **Q. Never?**

15 A. Never.

16 **Q. Even on the five-minute test?**

17 A. Even on the five-minute test. Down here at the
18 bottom of the second page where it says unsatisfactory, I
19 check that.

20 **Q. You just check the box. So you would never**
21 **write anything in there particularly good or particularly**
22 **bad?**

23 A. No.

24 (Exhibit 26 marked.)

25 BY MS. KUCUK:

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16 (Pages 58 to 61)

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1 small. When you're not thinking specifically, do you
 2 remember that coming up or hearing a story?
 3 A. When I used to work at Anchorage Cold Storage
 4 we had people come in that tried to do that work that
 5 were let go because they weren't physically able to
 6 maintain the workload.
 7 Q. And were those people men or women?
 8 A. Both.
 9 Q. Were they predominately woman or predominately
 10 men?
 11 A. Men.
 12 Q. And it was based on their strength?
 13 A. Yes.
 14 Q. You also mentioned when people are small there
 15 are usually people around to help them?
 16 A. Not usually. That's -- I mean, we might be in
 17 the same place at the same time delivering, and there's
 18 occasions when we're there together we help each other.
 19 So one of the reasons for that is that it speeds things
 20 up because a lot of places you can only deliver one
 21 trailer at a time. So if there's two of us there we help
 22 each other do the entire work, open the doors up, back it
 23 up, unhook, get hooked up to the other empty, and pull
 24 away so that the next guy can get in there.
 25 Q. But if you're by yourself and you're small?

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1 A. You do it by yourself.
 2 Q. Do you remember administering the test to Dan
 3 Tullis?
 4 A. Yes, I do.
 5 Q. Do you remember anything in particular that
 6 stands out about his driving ability?
 7 A. Not that stands out, no.
 8 Q. What was you're overall impression of Dan as a
 9 driver?
 10 A. That he was very comfortable behind the wheel.
 11 Q. And tell me about his tests. Where did you
 12 start?
 13 A. United Freight's yard.
 14 Q. And was he hauling an empty trailer or a
 15 trailer with a load in it?
 16 A. I'd have to refresh my memory on the dispatch
 17 log, but I believe for both of them we went from United
 18 Freight to the Port with an empty and picked a load up
 19 for both of them going out to K&L.
 20 Q. So it was pretty much the same route?
 21 A. Yes, it was.
 22 Q. And in the end, what did you say about Dan?
 23 Who did you talk to when you finished an exam -- the
 24 test?
 25 A. Office manager, Janice.

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1 Q. So you go in and you finish the exam, and you
 2 go straight to Janice?
 3 A. Yes.
 4 Q. And what happens then?
 5 A. Usually if it's one driver I tell her whether
 6 or not they did a decent enough job to be hired by United
 7 Freight.
 8 In this particular case there was only one
 9 position to be filled, and we had to make a decision as
 10 to which person we wanted to hire that day.
 11 Q. Who told you there was only one position
 12 available?
 13 A. I would say Dana probably did.
 14 Q. And when did you learn that?
 15 A. I can't be sure, but I would say it was after
 16 the test -- both tests were done. Because I know I had
 17 no knowledge that there was going to be a second driver
 18 after I got done doing the first one.
 19 Q. So you think after both tests were finished you
 20 knew that there was only one position?
 21 A. Yes.
 22 Q. So who -- and Dana would have told you there
 23 was only one position?
 24 A. Probably. It could have been Janice that day.
 25 I'm not certain on that.

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1 Q. But you think that the first person you went to
 2 see after the test was Janice?
 3 A. I know it was.
 4 Q. You know it was?
 5 A. Yes.
 6 Q. And did you compare the two drivers when you
 7 were talking with Janice?
 8 A. Yes.
 9 Q. So then can we assume either it was Janice that
 10 told you there was one position open, or you had learned
 11 some time previous?
 12 A. Some time right in that ballpark, yes.
 13 Q. Okay. Do you recall Janice telling you there's
 14 only one position open?
 15 A. I think by the time we got into the
 16 conversation I would say it was probably a given because
 17 she was asking me which one I felt was a better qualified
 18 driver for United Freight.
 19 Q. You mentioned once you got into the
 20 conversation. How did the conversation start do you
 21 suppose with Janice -- after the drive tests?
 22 A. It would be pure speculation, but I would
 23 imagine she probably said -- asked me who I felt was a
 24 better driver for them to hire.
 25 Q. And your response was?

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19 (Pages 70 to 73)

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1 A. My response then was Dan Tullis.
 2 Q. And what was the reason that you gave Janice?
 3 A. Because Dan was just smoother and faster and he
 4 had Port experience.
 5 Q. What do you mean by faster?
 6 A. Just faster, meaning out on the road he drove
 7 faster. He was -- I'm going to say more at ease with
 8 what he was doing, which makes it faster.
 9 Q. Did you discuss anything else with Janice?
 10 A. No.
 11 Q. So this sounds like a relatively short
 12 conversation?
 13 A. It was.
 14 Q. Is this the way it always works when you do a
 15 drive test? Do you always go straight to Janice?
 16 A. Yes.
 17 Q. Do you talk with anybody else in the company
 18 about the drive test?
 19 A. Afterwards. Sometimes I'll talk to dispatch,
 20 but not usually.
 21 Q. Sometimes you talk to dispatch, Dana?
 22 A. Yes.
 23 Q. And what would you tell Dana?
 24 A. Basically the same thing that I would have told
 25 Janice.

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1 Q. And this -- on this specific day when you gave
 2 the test to both Dan and Shotsay. Did you speak to
 3 anyone else besides Janice about the drive test?
 4 A. No, not separately. And the reason I say that
 5 is because when Janice and I discussed it, we were in the
 6 dispatch room, and Dana was there. Dana was not part of
 7 the conversation, but he was there and he could hear us
 8 talking.
 9 Q. Did he join in?
 10 A. No.
 11 Q. Was there anybody else in the office -- the
 12 dispatch office?
 13 A. No.
 14 Q. So it was just you and Janice?
 15 A. That's right.
 16 Q. Did you give any information about Shotsay's
 17 test to Janice?
 18 A. We had discussed Shotsay's test after Shotsay's
 19 test was over with -- immediately afterwards. And my
 20 recommendation there was that she did a satisfactory
 21 job.
 22 Q. Was anybody else there with you and Janice when
 23 you had that conversation, directly after Shotsay's test?
 24 A. I can't tell you exactly where that first
 25 conversation was taken.

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1 Q. What would be the options for where that was
 2 taken?
 3 A. In the private office down the hall from
 4 dispatch, or in dispatch's is where we usually did that.
 5 Q. Could it have been during the time when you
 6 were speaking with Janice, directly after Shotsay's test,
 7 that Janice told you there was only one position open?
 8 A. Could have, should have. It might have
 9 happened then, but it was noon when we got back from that
 10 one, and Dana told me to stick around for lunch because I
 11 had another driving test to do. And then I knew we had
 12 multiple driving tests. But I did not know how many
 13 positions were open at that time.
 14 Q. When you spoke with Janice right after
 15 Shotsay's test, was Dana there also?
 16 A. I can't tell you that. I don't remember.
 17 Q. But you spoke with Dana around that time
 18 sometime -- you said around noon is when you were there?
 19 A. Yes.
 20 Q. Dana mentioned stick around?
 21 A. Yes.
 22 Q. So you spoke with Dana at some point?
 23 A. Yes.
 24 Q. Do you remember speaking with anybody else in
 25 between the two tests?

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1 A. No.
 2 Q. Let's get to Shotsay's test specifically. You
 3 mentioned as far as you recall you took the same route
 4 and did the same type of things with Shotsay that you did
 5 with Dan?
 6 A. Yes.
 7 Q. So you think that both left with an empty
 8 trailer?
 9 A. Yes.
 10 Q. Do you recall -- okay. Let's get back to
 11 this -- scratch that.
 12 Can you tell me any specific strengths or
 13 weaknesses of Shotsay's performance during her test?
 14 A. Her biggest weakness for the overall test was
 15 the fact that she didn't know the Port area and she
 16 didn't know the Anchorage Bowl streets.
 17 Q. What are you referring to when you say
 18 Anchorage Bowl?
 19 A. The Greater Anchorage area from Eagle River to
 20 Potters Marsh.
 21 Q. Were you aware that Shotsay was living in the
 22 Anchorage area at that time?
 23 A. No.
 24 Q. And you felt that she had trouble driving in
 25 the area? She didn't know where she was going?

EXHIBIT

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20 (Pages 74 to 77)

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1 A. She didn't know where she was going. And the
2 reason I know that is because she had to ask me where the
3 Port of Anchorage was when we left United Freight. And I
4 also had to tell her how to get to K&L.
5 **Q. So you felt her weakness was that she wasn't**
6 **familiar with the area and the Port?**
7 A. Yes.
8 **Q. What about her driving?**
9 A. She did a satisfactory job of driving.
10 **Q. Did you have any specific concerns?**
11 A. No specific concerns that I didn't feel that
12 she probably could have over come.
13 **Q. Did she have any particular strengths?**
14 A. No.
15 **Q. Was she driving a truck with a ceramic clutch**
16 **that day?**
17 A. Yes, she was.
18 **Q. Driving a ceramic clutch, does that take a**
19 **particular skill?**
20 A. Just getting used to it.
21 **Q. Are all drivers used to ceramic clutches? Did**
22 **she do okay with a ceramic clutch?**
23 A. Once she got used to it she did fine.
24 **Q. Did you tell her specifically she did a good**
25 **job with the ceramic clutch?**

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1 A. No.
2 **Q. You don't recall doing that?**
3 A. No.
4 **Q. Was she driving a truck with a Super 10**
5 **transmission?**
6 A. Progressive 10, yes.
7 **Q. It's called a Progressive 10?**
8 A. Yes.
9 **Q. Is it ever referred to as a Super 10?**
10 A. Could be.
11 **Q. Is that special?**
12 A. It was a relatively new transmission at the
13 time. It hadn't been out very many years.
14 **Q. Do drivers occasionally have trouble with the**
15 **Progressive 10 or Super 10?**
16 A. Yes.
17 **Q. Did Shotsay have trouble with that?**
18 A. No, not particularly. When she got used to how
19 it shifted she did fine.
20 **Q. Were you concerned about Shotsay's size?**
21 A. No.
22 **Q. Were you concerned with her ability to open**
23 **trailer doors?**
24 A. Concerned? No, not really. Especially after
25 she was able to do it after K&L.

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1 **Q. You said, "concerned not really," and you sort**
2 **of shrugged. Did the thought cross your mind?**
3 A. Yes.
4 **Q. How did it cross your mind?**
5 A. Just being smaller.
6 **Q. That she might have trouble?**
7 A. Yes.
8 **Q. And you knew that because you knew some small**
9 **drivers have trouble?**
10 A. Everybody has trouble.
11 **Q. But some small people have a special**
12 **difficulty?**
13 A. Yes.
14 **Q. But you mention at K&L you had the opportunity**
15 **to see her open the doors and she didn't have trouble?**
16 A. That's right.
17 **Q. So then you had no more concerns?**
18 A. That's right.
19 **Q. Did she pass her test?**
20 A. Yes, she did.
21 **Q. And you indicated that she passed by checking**
22 **the satisfactory box on her test?**
23 A. Yes, I believe I did.
24 **Q. And then you also mentioned to Janice that she**
25 **had done satisfactorily on her test?**

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1 A. Yes.
2 **Q. Did you give her oral feedback during or after**
3 **her exam?**
4 A. I believe as we were coming back to the yard
5 that I told her that she had done a satisfactory job.
6 **Q. So she would have felt positive about the**
7 **experience?**
8 A. Yes.
9 **Q. From your feedback?**
10 A. Yes.
11 **Q. Did you believe she was a slow driver?**
12 A. On that driving test, yes, she was slow. I
13 wouldn't say she was excessively slow, but I also
14 contribute that to being new behind the wheel of that
15 truck and wanting to make sure that she got everything
16 right.
17 **Q. So is this something that, when you mentioned**
18 **before weakness, but nothing that she wouldn't have been**
19 **able to overcome?**
20 A. That's right.
21 **Q. Now, do you assess whether a person is slow or**
22 **not by whether or not they get stuck at traffic lights**
23 **and urban settings?**
24 A. In a way, yes.
25 **Q. Tell me how that --**

EXHIBIT

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21 (Pages 78 to 81)

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1 A. Because if -- the north-south thoroughfares in
2 Anchorage are synchronized lights, and under good road
3 conditions if you get with the program you can catch the
4 lights synchronized. And you can save yourself as much
5 as five to seven minutes on a one-way trip. So if you're
6 putzing along and you don't catch the lights, it's going
7 to take more time.

8 Q. Do you think she was putzing along?

9 A. No, I don't think she was putzing along, no.
10 I think she was taking her time so that she was getting
11 everything right.

12 Q. So you felt she was being safe?

13 A. Yes.

14 Q. And careful?

15 A. Yes.

16 Q. Did you have worries in your mind that maybe
17 she would always be a slow driver?

18 A. At the time, no.

19 Q. At the time, right after her exam when you went
20 in and spoke with Janice and you said she had done
21 satisfactory, did you recommend her for hire?

22 A. Yes, I did.

23 Q. And how did you convey that to Janice?

24 A. I just told her that probably she did a fine
25 job -- satisfactory job. And that if they wanted to they

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1 A. No, not specifically.

2 Q. So you give the information to Janice saying
3 whether or not they passed?

4 A. Yes.

5 Q. Do you know who she gives that information to?
6 Does she convey it to somebody, or does Janice make the
7 decision?

8 A. I can't tell you that.

9 Q. Were you ever asked about a driver's test by
10 anybody other than Janice or Dana?

11 A. Probably. I mean, I can't say no definitely
12 because I know I've had guys after I've been done with
13 driving tests ask me. I've had ladies at Tote ask me
14 specifically, days when I've had two or three guys in the
15 cab of the truck for only one run.

16 Q. Would you be asked by anybody else at United
17 Freight?

18 A. No.

19 Q. And on these specific times were you asked by
20 anybody else?

21 A. No.

22 Q. So you only gave information about the drive
23 test to Janice and to Dana?

24 A. That's right.

25 Q. Did you speak with anybody at the union?

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1 could. I didn't see any reason why she couldn't be.

2 Q. Were the traffic conditions different between
3 Shotsay's test and Dan's test?

4 A. History of Anchorage driving I would say the
5 traffic was heavier for Dan than it was for Shotsay.

6 Q. Why is that?

7 A. It's notorious that it picks up after lunch.
8 During lunch people are doing errands and stuff. The
9 traffic is heavier around 12 or 12:30.

10 Q. So it's not heavy in the morning?

11 A. Back then it was moderate.

12 Q. Moderate. Do you know what the hiring
13 procedure -- the procedure for hiring is after you
14 complete the driving test at United Freight?

15 A. From my past experience of being hired there,
16 yes. I can summarize what it takes.

17 Q. Go ahead.

18 A. After you've completed the driver's test, if
19 you did it satisfactorily you have to fill out the
20 application. And you have to go down and have a drug
21 test done, and then you sit and wait for the drug test to
22 come back. And once the drug test has come back, as the
23 company needs you, they will call you in to work.

24 Q. Do you know who was making hiring decisions
25 behind the scenes at United Freight?

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1 A. No.

2 Q. You didn't speak to anybody about Shotsay's
3 test?

4 A. No.

5 Q. Ever?

6 A. Ever.

7 Q. Were you aware during and after Shotsay's test
8 that there was an issue with hiring hall practices?

9 A. No, I was not.

10 Q. Are you aware that there is now?

11 A. Yes, I am.

12 Q. When did you become aware of that?

13 A. I became aware of that, I would say it was
14 probably July of '04, whenever I filled out this right
15 here (indicating), that's my statement about what
16 happened because that's when I was informed there was a
17 problem with that particular driving test that day.

18 Q. And who informed you that there had been a
19 problem?

20 A. Frank Monfrey.

21 Q. And he asked you to come in?

22 A. Yes.

23 Q. And you had the conversation that lasted about
24 an hour?

25 A. Yes.

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1 Q. Is it possible that you discussed anything
2 involving this case?
3 A. Possible, yes, but I know we didn't.
4 Q. Okay. And at no other time did you ever speak
5 with anybody from the union about this case?
6 A. No.
7 Q. Did the union help you find future employment?
8 A. No. They said they would.
9 Q. They said they would help you find employment?
10 A. Yes.
11 Q. But they couldn't?
12 A. No.
13 Q. Do you know why?
14 A. Nothing available.
15 Q. Does your heart condition prevent you from
16 driving?
17 A. Yes.
18 Q. Any type of truck?
19 A. No.
20 Q. But you're not driving anymore?
21 A. No, I'm not.
22 MS. KUCUK: Can we mark this as an exhibit?
23 (Exhibit 27.)
24 BY MS. KUCUK:
25 Q. The court reporter is handing you Exhibit

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1 Number 27, which for the record is UFT-01010. Do you
2 know what this document is?
3 A. Well, by reading the top of it it says it's the
4 employee list at United Freight and Transport.
5 Q. Does this look familiar to you?
6 A. Yes.
7 Q. Would it be possible for you to mark on that
8 sheet which names -- which people on that list had Port
9 experience?
10 A. No.
11 Q. You would not be able to do that?
12 A. No.
13 Q. Why would you not be able to do that?
14 A. Probably because I didn't give all these
15 driving tests, and the other would be that everybody --
16 if I did give the driving test and they did or didn't
17 have Port experience, it's not something that I would put
18 in my memory banks as important. If they didn't have
19 port experience we dealt with it. If they did, fine.
20 Q. So port experience to you was not especially
21 important?
22 A. Like I said, it's an asset. It's not critical.
23 Q. Not critical. Is this something like we talked
24 about earlier, things that you can overcome? Is lack of
25 Port experience something you can overcome?

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1 A. Sure.
2 Q. I'm just going to read off a few names and you
3 can let me know whether or not they had Port experience
4 or not. Do you know who Gary Dixon is?
5 A. No, I don't recall Gary.
6 Q. Thomas Farr?
7 A. No.
8 MS. HEALY: Is he saying he doesn't know him?
9 Just for clarification, he doesn't know him or he doesn't
10 remember?
11 BY MS. KUCUK:
12 Q. Are you saying you don't know these people, or
13 you don't know if they had Port experience?
14 A. I don't remember if they had Port experience.
15 Q. Do you know Gary Dixon and Thomas Farr?
16 A. I don't believe so.
17 Q. Are you familiar with them?
18 A. To the extent that I believe I gave them a
19 driving test.
20 Q. Do you remember Jeffery Freeman?
21 A. I don't remember if he had Port experience, no.
22 Q. Tom Galloway?
23 A. No.
24 Q. Perry Lemons?
25 A. No.

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1 Q. Craig Merrick?
2 A. No.
3 MS. HEALY: When you're saying no, you're
4 saying no, you don't remember whether they had Port
5 experience or not.
6 THE WITNESS: Whether they had Port experience
7 or not.
8 BY MS. KUCUK:
9 Q. Daniel Tullis?
10 A. Yes, I remember that he had Port experience.
11 And that was just because of the special conditions
12 underneath which this happened that day.
13 Q. What special conditions?
14 A. That we had two drivers back to back, and we
15 had to make a decision as to which one we were going to
16 hire.
17 Q. What did you think was the most important thing
18 that made Dan stand out over Shotsay that day in your
19 mind when you gave the recommendation for Dan over
20 Shotsay?
21 A. The most outstanding thing would be his
22 knowledge of the Port and his knowledge of Anchorage, and
23 I'm going to say the expediency of his driving.
24 Q. And did you convey all of those do you suppose
25 to Janice?

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24 (Pages 90 to 93)

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1 Q. And then -- so how fast are you going when
2 you're going through the synchronization? What's the
3 speed limit that it's set for?
4 A. It's 35 miles an hour. On Fifteenth, when you
5 drop off the hill on Fifteenth it kicks to 45. Then it
6 stays 45 miles an hour until you get to Potter and it
7 jumps to 50.
8 Q. And that's assuming that you don't -- what cars
9 you have in front of you, correct?
10 A. And the road conditions.
11 Q. I'm sorry?
12 A. And road conditions.
13 Q. Synchronization is actually an ideal -- how
14 often times are you able to really hit that?
15 A. Actually, quite a lot. Until late afternoon
16 when the traffic really starts building then of course
17 you're out of luck and the company is aware of that.
18 Q. And -- but it can vary?
19 A. Yeah.
20 Q. When you say Shotsay was slow at it, she wasn't
21 hitting the lights. Is that one of your criticisms?
22 A. It wasn't a criticism. It was just an
23 observation.
24 Q. Observation. Any particular reason why she was
25 not hitting the lights?

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1 A. She was just taking her time and being careful.
2 Q. And I guess that's pretty prudent, right?
3 A. Sure, on a driving test.
4 Q. It's not really a fault, is it, when somebody
5 gets in a car and you want to make sure you're
6 comfortable with it?
7 A. That's right.
8 Q. And that's probably the number one key in a
9 truck driver is that safety is first?
10 A. It's in the top five.
11 Q. What's higher than that?
12 A. Being awake.
13 Q. What else is there in the top five?
14 A. Well, you're overall mental picture of the day,
15 and just how -- what your mental picture is, and how you
16 feel when you come to work. And safety is an issue. I'd
17 say there are just a lot of things. I can't pin point it
18 for you right now not sitting here thinking about it for
19 a while.
20 Q. Sure. But safety is primary?
21 A. Oh, yeah.
22 Q. Do you have any children?
23 A. Yes.
24 Q. Have you ever stopped a car and then get out of
25 the car and taken over kind of a thing?

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1 A. With my kids, no, I have not. I have with
2 other drivers.
3 Q. But you teach them safety first, right?
4 A. Yes.
5 Q. And you want them before -- as they're learning
6 in a car to try to get acclimated and make sure they
7 understand, and get the feel for it?
8 A. Yes.
9 Q. And is the same truck used all the time at
10 United or is there different tractors?
11 A. We have five or six different makes of trucks
12 at United Freight.
13 Q. Within each make, are the trucks the same? Are
14 they similar?
15 A. I'm going to say similar.
16 Q. So you've got to get the feel for each one?
17 A. You bet.
18 Q. In fact, every time you get in a new tractor
19 you've got to get the clutch -- how the clutch handles
20 and the gears?
21 A. The shift pattern. All that.
22 Q. Generally, how long does it take someone to get
23 used to something like that -- to get the touch?
24 A. You're asking me to speculate on if everybody
25 in this room was exactly the same. And you can't do it.

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1 An experienced driver, half an hour.
2 Q. Get familiar with the truck -- the touch with
3 the truck?
4 A. Yeah.
5 Q. Okay. And is that one of the things you look
6 for when you're doing the driving test, how long it takes
7 for the driver to get the feel for the truck?
8 A. It's not a real high issue, but it doesn't take
9 very long for me to know whether the driver is getting
10 comfortable with the truck and knows how to drive the
11 truck, and is at ease behind the wheel, and not very
12 long. 15 minutes.
13 I mean, they may take a little bit longer in
14 some areas. But on the whole, within 15 minutes I know
15 whether they can drive.
16 Q. Delivering freight, is it pretty routine work?
17 A. Yeah.
18 Q. How many customers do you have?
19 A. I think United Freight has somewhere in the
20 vicinity, of 75 to 100 customers.
21 Q. Does the driver get pretty much the same
22 customers or do they all get all 75 to 100?
23 A. They get them all.
24 Q. What are some of the customers? Costco?
25 Wal-Mart?

Exhibit

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29 (Pages 110 to 113)

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1 A. No, we don't do Costco. We do Wal-Mart. We do
2 Sam's Club, K&L, Pepsi, Fred Meyer, Wal-Mart in the
3 Valley. We do line haul for Tote occasionally. We take
4 some of those -- that's usually summer months only. Bob
5 Benson's Christmas trees, the Antique Shop at 36th --
6 just south of 36th on the Old Seward Highway, Ceramic
7 Tile out off of Old Seward.

8 Q. I guess --

9 A. The post office.

10 Q. I'm sorry?

11 A. The post office.

12 Q. So is there generally customers that are
13 predominant and the other customers are sporadic?

14 A. Yes.

15 Q. So even with the predominant customers it's
16 pretty much routine?

17 A. Yes.

18 Q. The paperwork and the yard, and going to pick
19 up the trailer and things like that?

20 A. Yes.

21 Q. Does the company -- when a new person gets
22 hired, does the company have another employee sit with
23 them for a couple of days to help them get acclimated?

24 A. Not necessarily. I went straight to work. I
25 did my three days and was put in a truck and I drove.

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1 Q. I'm sorry? You went what?

2 A. Three days for my drug test and was put in a
3 truck. And they said go for it. But I already knew the
4 town. I knew the Port and everything else. My driving
5 test lasted from Mountain View and back to the yard. I
6 wasn't even on the street an hour.

7 Q. So there's not too much to it then for the
8 driver in the sense that it seems like we went through a
9 long time to go through the paperwork, go through the
10 gate. It's really not that difficult?

11 A. No.

12 Q. Have you ever been to the Port of either
13 Tacoma, Seattle, Long Beach?

14 A. Yeah, the Port of Tacoma and the Port of
15 Seattle.

16 Q. Are they a little different than the Port of
17 Anchorage?

18 A. Yes.

19 Q. Could you tell me how they're different?

20 A. Way busier. You can sit in the Port of Seattle
21 for two and a half hours just to get into the gate.

22 Q. How about negotiating the port -- the size of
23 the port?

24 A. It's a lot bigger.

25 Q. Is there any comparison?

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1 A. The basics, yes. There's containers out there
2 and you need to go find them and you pick them up. The
3 Port of Seattle sometimes you have to go find a chassis
4 to put the container on before you can even get the
5 container. At least here in Anchorage 99.99 percent of
6 the time they're already on a chassis and all you have to
7 do is back underneath it.

8 Q. And also the size of the ports; is there a
9 difference in size of the ports?

10 A. You bet. The Port of Seattle is about 10 times
11 bigger than the Port of Anchorage. And I'm not talking
12 the complete port. I'm just talking like Horizon Lines.
13 Horizon Lines now is in Tacoma, but it's still way bigger
14 than here -- so is Tote for that matter. But they're set
15 up basically the same.

16 Q. Like the Port of Tacoma, I mean, those streets
17 aren't marked very well, are they?

18 A. No.

19 Q. And if you make the wrong turn you can wind up
20 on the other side of the waterway, right?

21 A. Yes, you can.

22 Q. And in Seattle who knows where you're going to
23 wind up if you make the wrong turn, right?

24 A. I can tell you some horror stories about there.

25 Q. Did you give Gary Dixon his test?

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1 A. I don't recall.

2 Q. Okay. I didn't think -- I thought you
3 mentioned that you did?

4 A. It doesn't pop out.

5 Q. Is that testing supposed to be constant among
6 all testers so they're all equally -- all compared
7 equally?

8 A. Well, yeah, that's one of the reasons that the
9 company tries to hold the driving testers to just a
10 couple of guys. That's pretty much status quo every time
11 you go out. You're not having somebody different do it.

12 Q. About how long is it from the Port to K&L --
13 miles wise? Do you know?

14 A. About eight miles.

15 Q. Each way?

16 A. Each way.

17 Q. When you give a test, I'm assuming you would
18 want to see how somebody handles a truck on something
19 like C Street, International Airport Road?

20 A. Yeah.

21 Q. And you want to drive around the Port and pick
22 up in one place and drop it to off at the next place,
23 like from Horizon to Tote or from here; is that correct?

24 A. You want to be out on the road. You want to

25 see how they handle traffic and everything that goes with

Exhibit A
12-13

30 (Pages 114 to 117)

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1 and just on down the list.

2 Q. And United Freight it's not when you're hired
3 with that company -- not necessarily how long you've been
4 a Teamster, right?

5 A. No.

6 Q. So let's assume somebody was hired at United
7 that's been a Teamster for five years, and they have been
8 working for say three years at United hypothetically.
9 And then a guy who has been a Teamster for 15 years, he
10 gets hired by United, does he jump over?

11 A. No.

12 Q. So the guy who has been there for two years,
13 even though he's been a Teamster for five years, he's
14 higher in seniority at United?

15 A. That's right.

16 Q. So he gets to decide I'm going to take a
17 three-day weekend and go fishing, that kind of thing?

18 A. Yes.

19 Q. And was there a policy at United to ask for
20 like five drivers for two or three slots?

21 A. Yes.

22 Q. Why was that?

23 A. To get the best qualified driver that they can.

24 Q. Is that a violation of not -- to steer against
25 the whole seniority system if the actual seniority system

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1 did do it that way?

2 A. No, not that I was ever aware of. And the
3 union never said we couldn't do it.

4 Q. To your knowledge?

5 A. Yes.

6 Q. You don't know if they talked to Frank about it
7 and said, hey, we can't do this anymore?

8 A. No. And we had been doing it for almost
9 10 years before Frank came along. We had been doing it
10 before I came.

11 Q. Asking for more drivers --

12 A. Than positions available.

13 Q. So during that period of time, were there women
14 drivers competing with men drivers and not being hired?

15 A. I can't remember any.

16 Q. Do you recall when the women drivers that were
17 hired there, during your time you worked at United
18 Freight, whether or not they were competing against other
19 men at the same time for that one slot?

20 A. No, not that I remember.

21 Q. You mentioned earlier about the one woman who
22 did not like the boss because -- and the boss wanted the
23 drivers to work off the clock. Was there a grievance
24 filed on that one?

25 A. No, with her, no.

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1 Q. Did the other drivers file a grievance?

2 A. Yes.

3 Q. And I guess the practice had to stop; is that
4 correct?

5 A. No.

6 Q. The union let the drivers continue to do it?

7 A. Yeah.

8 Q. Doesn't the -- don't the federal regs count
9 that as work time?

10 A. Yeah.

11 Q. Why did the union let these guys working for
12 the company, allow these guys to do it working off the
13 clock?

14 A. The answer I got was there's nothing we can do
15 about it. It's what a driver wants to do on his own
16 time.

17 Q. Is that still going on now?

18 A. To my knowledge, I don't know.

19 Q. Was it going on in '03?

20 A. Yes.

21 Q. What would happen to a driver if they didn't
22 want to work off the clock?

23 A. Legality wise, nothing.

24 Q. Okay. Go ahead.

25 A. We're not going to go into it.

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1 Q. Why?

2 A. Pressure. Let's just put it that way --
3 pressure from the company.

4 Q. What kind of pressure?

5 MR. EVANS: Objection to the relevance of going
6 into -- do you want to conduct a deposition on a
7 potential wage and hour claim be my guest -- unless it
8 relates to this --

9 MR. LEGACKI: I could think of the relevancy of
10 it in the sense though as we talked about yesterday, you
11 know, Mike Posciri is business agent and the union would
12 not have had anything to do with, you know, did they want
13 the wife of a business agent, who may change that policy.
14 Go ahead.

15 Sorry to put you on the spot, but you no longer
16 work for the company.

17 THE WITNESS: In my case I was pulled out of a
18 nice truck and put into one of the older dilapidated
19 ones.

20 BY MR. LEGACKI:

21 Q. So that brings up a point. Let's assume if a
22 company wanted to try to get rid of somebody, they would
23 do these kind of things, pull them out of a nice truck
24 and put them in a dilapidated truck or give them
25 different shifts, or give them some of the scutt work and